

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 20-cr-0316 WJ

TROY LIVINGSTON,

Defendant.

**UNOPPOSED MOTION TO CONTINUE SENTENCING HEARING AND
RELATED DEADLINES**

Defendant Troy Livingston respectfully moves the Court to continue the sentencing hearing scheduled for May 17, 2021, and all related deadlines, for three weeks. The United States does not oppose this request.

In support of this motion, Mr. Livingston states as follows:

1. On August 4, 2020, Mr. Livingston plead guilty to second-degree murder, in violation of 18 U.S.C. §§ 1153 and 1111. [Dkt. 50.] The plea agreement contains no agreement as to sentencing, except regarding Mr. Livingston's acceptance of responsibility. [Dkt. 49.]
2. Sentencing is currently scheduled for May 17, 2021. [Dkt. 57.] The Presentence Investigation Report was disclosed on October 13, 2020. [Dkt. 52.] Mr. Livingston submitted his informal objections and proposed corrections to U.S. Probation on April 26, 2021.

3. The defense sentencing investigation has been stalled by the COVID-19 pandemic. Given the Court's discretion at sentencing and the wide range of potential sentences available to the Court under the relevant statutes (0 years to life imprisonment), the defense needs to collect substantial information relevant to sentencing and may call witnesses at the sentencing hearing. Mr. Livingston and his counsel have been unable to complete these tasks due to COVID-related concerns and restrictions over the past year.

4. Mr. Livingston is a member of the Navajo Nation, as are the majority of the mitigation witnesses and the victim's family. The Navajo Nation has been hit particularly hard by COVID-19, and until very recently its leaders had imposed nighttime and weekend curfews to control the spread of the disease. Because of these restrictions, members of the defense team could not travel to meet with witnesses or to collect documents. Moreover, witnesses could not travel to Albuquerque for meetings with members of the defense team given the risks of infection.

5. Recently, however, conditions have begun to improve. Undersigned counsel and other members of the defense team were recently vaccinated and are beginning to travel. The Navajo Nation has made incredible progress towards vaccinating its citizens and restrictions on travel to the Nation have been lifted.

6. While the defense team are now able to prepare for sentencing and have begun to do so, we need more time to complete the necessary work. We will need to travel to Gallup at least once and possibly twice to meet with sentencing witnesses, collect sentencing letters, and collect records. Once the investigation is complete, counsel will need to draft a sentencing memorandum and make final decisions regarding the sentencing presentation. Counsel believes this work can be completed if the sentencing hearing is continued for three weeks, until the week of June 7, 2021.

7. Although Mr. Livingston is incarcerated pending sentencing, given the offense to which he pleaded guilty, he expects the Court to sentence him to a substantial term of incarceration. Thus, the requested continuance will not prejudice him.

8. Undersigned counsel has conferred with counsel for the United States, David Cowen, who stated he does not oppose a continuance of the sentencing hearing and related deadlines.

CONCLUSION

WHEREFORE, based upon the foregoing, Defendant Troy Livingston respectfully requests that this Court continue his sentencing hearing and all related deadlines, including those set forth in Fed. R. Crim. P. 32 and D.N.M.LR-CR 32, for three weeks.

Respectfully submitted,

/s/ Theresa M. Duncan
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Attorney for Defendant Troy Livingston

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served on all parties by operation of the Court's CM/ECF electronic filing system and pursuant to the CM/ECF Administrative Procedures Manual §§1(a), 7(b)(2), on April 26, 2021.

/s/ Theresa M. Duncan
Theresa M. Duncan